

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.968 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

KAMLABEN M PARMAR

VERSUS

REGIONAL TRANSPORT OFFICER, R.T.O. OFFICE, RAJKOT & ANR

Appearance:

MR DM THAKKAR for the Petitioner

Coram: S.K. Keshote,J

Date of decision:19/6/97

C.A.V. JUDGMENT

#. Mr.H.L. Jani is present in the Court and when he was

called upon to make submissions on behalf of respondent, he made a statement that he has no papers of the case nor any instructions in the matter to appear. In this case, though this petition is of the year 1985, the respondents have not filed reply to the Special Civil Application. Heard learned counsel for the petitioner and perused the Special Civil Application.

#. The petitioner, a part time employee, a Water Bearer, filed this Special Civil Application before this Court and prayer has been made for direction to the respondent for quashing and setting aside the action of the respondents not considering the petitioner for the permanent post of class IV service.

#. The petitioner, as per her case in the Special Civil Application was appointed as Water Bearer in the year 1979 at a monthly salary of Rs.75/-. It is not in dispute that it was a part-time appointment. However, the learned counsel for the petitioner contended that though it was a part-time appointment, the respondents were taking full time work from the petitioner. This is a question of fact and this Court, sitting under Article 226 of the Constitution of India, cannot go on this question. Mere averment made by the petitioner that the respondents were taking more than eight hours' work from her cannot be accepted in absence of any cogent and satisfactory evidence produced on record by the petitioner. The petitioner is an interested person and she can make any statement. Moreover, when the appointment was only part-time, it is too difficult to accept this averment of the petitioner. The salary for part-time work, which was given to the petitioner, was increased from time to time. So, it is a case of part-time employment. The petitioner has not produced order of her appointment as a part-timer. It is also not case of the petitioner that she has been appointed as part-time Water Bearer after selection. It is admitted case of petitioner that Water Bearer is class IV post. The learned counsel for the petitioner does not dispute that rules are there for selection and appointment in the category of class IV. So, the petitioner's appointment as a part-timer itself is dehors the rules or in violation of provisions of Articles 14 & 16 of the Constitution of India. The salary for the part-time work which was initially paid to the petitioner has been increased from time to time and presently, as per the contention of learned counsel for the petitioner, she is drawing Rs.450/- p.m. It appears from the record of this petition that the petitioner has been appointed as a part-time employee and naturally when she was in

part-time employment, the working hours could not be more than two hours.

#. From the pleadings made by the petitioner in para 7 of the Special Civil Application, it is clear that one additional post of Peon has been sanctioned and the petitioner has started making claim for absorption on this post. The learned counsel for the petitioner placed reliance on the Resolution of the Government dated 26.12.80, annexure 'C' and contended that as per the said Resolution, the petitioner acquired right to be made permanent as class IV. Reliance has also been placed on the decision of this Court in the case of Smt.Savitaben Dhanjibhai v. State of Gujarat & Ors. in Special Civil Application No.5069 of 1990 decided on November 4, 1993. It is not the case of petitioner that she fulfilled all requisite qualifications prescribed for the appointment under the rules in regular cadre of class IV. Even the petitioner has not stated what are the qualifications prescribed for appointment in the regular cadre of class IV. The appointment of the petitioner, as stated earlier, as a part-time Water Bearer is contrary to the provisions of Articles 14 & 16 of the Constitution of India as it was not made after selection. The said Resolution nowhere provides that even if a part-time employee is appointed dehors the rules or contrary to provisions of Articles 14 & 16 of the Constitution of India and if he completes three years' service his services has to be regularized. Moreover, the learned counsel for the petitioner has failed to point out that there is any proviso under the rules framed under Article 309 of the Constitution of India which empowers the Government to make part-timers regular on availability of permanent post. The decision of this Court on which reliance has been placed by learned counsel for the petitioner is not a good law in view of the latest decision of the Apex Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma & Anr., reported in (1996)7 SCC 562. The Apex Court has held that having framed rules for recruitment of various services or to a class of post, the State is bound to follow the same and to have selection of candidates made as per recruitment rules and appointments shall be made accordingly. There, the case was of daily wagers being appointed as Assistant Development Officer in a project. The appointment of a part-timer cannot be put on a better footing than the appointment of a daily wager. The Apex Court in that case, held that appointment on daily wages is not a appointment to the post according to rules. In the present case also, as stated earlier, the learned counsel for the petitioner has failed to point out any rule which

permits the respondents to make part-time appointment on the post of Water Bearer. In the case before Apex Court, the project on which the respondent was engaged had come to an end, but the Court has held that no direction can be given to engage daily wagers in any work or appoint them in existing vacancies, otherwise the judicial process would become other mode of recruitment dehors the rules. The Court has further held that the vacancies required to be filled in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when the recruitment is made and seek consideration of their claim on merits according to the rules for direct recruitment alongwith all the eligible candidates. It has further been held that the appointment on daily wages cannot be a conduit pipe for regular appointment which would be a back-door entry detrimental to the efficiency of service and would breed seeds of nepotism and corruption. The Apex Court has further held that even in Class IV cadre, recruitment according to rules is a pre-condition. In case the prayer of the petitioner is accepted, then what this Court will do is that it will give employment to a person on a regular permanent post, who has been illegally appointed as a part-timer. The appointment on part-time basis will then become a conduit pipe for regular appointment and as such the said appointment would be back-door entry. It will be very convenient for the office or the Department to fill in regular posts by having this conduit pipe for regular appointments. A person of their choice or their favourites will be appointed as part-timers and thereafter on regular permanent post on its availability. This will be not only contrary to the rules but also contrary to Articles 14 & 16 of the Constitution of India. This aspect of the matter as well as the fundamental rights conferred to all eligible candidates for consideration in public employment has not been considered by this Court in the case on which strong reliance has been placed by the learned counsel for the petitioner. The Resolution on which strong reliance has been placed by the learned counsel for the petitioner, as stated earlier, cannot be read so as to make appointments on a regular permanent post of class IV employees contrary to the provisions of Articles 14 & 16 of the Constitution of India as well as the rules framed under Article 309 of the Constitution of India. Though it may be a hard case, but this Court will not lay down incorrect law only on the basis of sympathies. Otherwise also, in case the contention of the petitioner's counsel is accepted, the relief granted in this case will be contrary to what the Hon'ble Supreme Court held in the case of State of Himachal Pradesh v.

Suresh Kumar Verma (supra). I do not find any legal or fundamental rights of the petitioner being infringed. The petitioner has not acquired any right to be made permanent in the class IV category only on the basis of working as a part-timer and further it is also not the case of the petitioner that otherwise also she fulfilled requisite eligibility prescribed for the class IV post.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, granted by this Court, stands vacated. No order as to costs.

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